

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

NICHOLAS ESPINOZA,

PLAINTIFF,

v.

**BOYS AND GIRLS CLUBS OF SAN
ANTONIO,**

DEFENDANT.

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CIVIL ACTION NO.

5:19-CV-167

**DEFENDANT BOYS AND GIRLS CLUBS OF SAN ANTONIO'S
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant BOYS AND GIRLS CLUBS OF SAN ANTONIO (hereinafter "Defendant") files its Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441 and 1446 and in support hereof would show the Court the following:

I. PROCEDURAL HISTORY

1. On or about November 1, 2018 Plaintiff NICHOLAS ESPINOZA ("Plaintiff" and/or "Espinoza"), filed his Original Petition, Jury Demand and Request for Disclosures ("Plaintiff's Original Petition") in the 407th Judicial District Court, Bexar County, San Antonio, Texas, Cause No. 2018CI21023 (the "State Court Action") against Defendant.¹

2. On January 23, 2019, Request for Process was requested on Defendant via U.S. certified mail.

3. On January 30, 2019, Defendant was served via U.S. certified mail.

¹ See Certified Copy of State Court File as of February 6, 2019, attached as Exhibit A.

4. Pursuant to 28 U.S.C. § 1446(b)(2)(B), Defendant timely files this Notice of Removal within thirty (30) days of receipt of Plaintiff's Original Petition.

II. NATURE OF THE SUIT

5. This lawsuit involves an action brought pursuant to Chapter 21 of the Texas Labor Code for alleged sex discrimination and retaliation and pursuant to the False Claims Act for alleged retaliation.

III. VENUE

6. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action was pending in the 407th Judicial District Court of Bexar County, San Antonio, Texas, and a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this district.

IV. BASIS FOR REMOVAL

REMOVAL IS PROPER BECAUSE THERE IS FEDERAL QUESTION JURISDICTION

7. This Court has original federal question jurisdiction over claims that arise under the laws of the United States. 28 U.S.C. § 1331; *see also*, 28 U.S.C. § 1441. A lawsuit filed in state court is removable if it affirmatively alleges a federal claim. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003). The presence or absence of a federal question is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists when a federal question is presented on the face of a plaintiff's complaint. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004); *Hoskins v. Bekins Van Lines*, 343 F.3d 769, 772 (5th Cir. 2003).

8. In Plaintiff's Original Petition, Plaintiff alleges that Defendant retaliated against him in violation of the False Claims Act. *See Pl's Pet.*, at ¶ 14. To the extent a court finds that Plaintiff has properly pled his False Claims Act claims, Plaintiff's claim is based on alleged

violations of federal statutes over which this Court has original jurisdiction. Given that the federal court has original jurisdiction over such actions, removal to federal court is proper pursuant to 28 U.S.C. § 1441.

9. Accordingly, pursuant to the requirements set forth in 28 U.S.C. §§ 1331, 1441, and 1446, Defendant removes this action from the 407th Judicial District Court, Bexar County, San Antonio, Texas, to this Court.

V. PROCEDURAL REQUIREMENTS

10. Pursuant to 28 U.S.C. § 1446(a), the following exhibit is attached:

Exhibit A:	Copy of State Court file (as of February 6, 2019), Cause No. 2018CI21023, 407 th Judicial District, Bexar County, Texas
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11. Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders and all other filings in the State Court Action are attached to this Notice of Removal.

12. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice of Removal will be given to all adverse parties promptly after filing the same.

13. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Removal will be attached to Defendant's Notice of Filing and then filed with the 407th Judicial District Court of Bexar County, San Antonio, Texas, promptly after filing the same.

PRAYER

Defendant respectfully requests that the State Court Action be removed and placed on this Court's Docket for further proceedings. Defendant also requests any additional relief to which it may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2019, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, and served a true and correct copy of the foregoing as indicated below on the following:

Via CMRRR NO. 9414 7266 9904 2133 7911 19

VIA EMAIL: DENNISLRICHARDLAW@GMAIL.COM

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/s/ Donna K. McElroy
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